that such deposits will adversely affect its ability to operate its agreement vessels. In the event of a waiver, the Maritime Administrator may require modification of the schedules. See § 390.6 (relating to administration of the agreement).

(6) *Selection of ceiling.* Except as may be otherwise provided in the agreement or these rules and regulations, the party may choose the ceilings with respect to which deposits are made.

(f) *Allocation of depreciation deposits*—(1) *In general.* 46 U.S.C. 53505(b) provides that in the case of a lessee of an eligible agreement vessel the maximum amount which may be deposited with respect to such vessel, under the depreciation ceiling, shall be reduced by any amount which the owner is required or permitted to deposit with respect to such vessel under its depreciation ceiling.

(2) *Method of allocation.* When an agreement vessel is leased, the party's agreement shall fix a percentage of the annual depreciation which the party may deposit. The percentage shall be that agreed upon between the lessors and the lessees unless the Maritime Administrator determines that the agreed upon percentage will result in an accumulation of assets in the fund or funds which is greater than or less than an amount necessary or appropriate to carry out the party's program. See paragraph (e) of this section (relating to level of deposits).

(g) [Reserved]

(h) *Funds held in trust for investment purposes.* A fund may be transferred in whole or in part to the control of an unrelated trustee for investment purposes with the prior written permission of the Maritime Administrator. The Maritime Administrator shall approve such a transfer when:

(1) The trustee meets the requirements for a depository under paragraph (b) of this section;

(2) The trust instrument provides that all investment restrictions stated in 46 U.S.C. 53506 and § 390.8 of these regulations will be observed;

(3) The trust instrument provides that the trustee will give consideration to the party's withdrawal requirements under the agreement when investing the fund;

(4) The trustee agrees to be bound by all rules and regulations which have been or will be promulgated governing the investment or management of the fund.

(i) *Federal ship mortgage guarantee or insurance.* A fund may serve in lieu of a Restricted Fund required in connection with Federal Ship Mortgage Guarantee or Insurance under 46 U.S.C. Chapter 537 and the regulations thereunder upon approval by the Maritime Administrator. Approval by the Maritime Administrator shall be conditioned upon the execution by the party of an agreement, satisfactory in form and substance to the Maritime Administrator, governing the dual use of the fund. Applications for permission to use the fund in this dual capacity should be made in writing to the Secretary, Maritime Administration.

[41 FR 4265, Jan. 29, 1976, as amended at 73 FR 56740, Sept. 30, 2008]

§ 390.8 Investment of the fund.

(a) *In general.* 46 U.S.C. 53506 provides that assets in the fund must be invested in accordance with certain restrictions. The rules in this section provide for the quality of securities, restrictions on the type of stock in which a fund may invest, related company investments and miscellaneous prohibited activities.

(b) *Permissible investments*—(1) *In general.* The party, at its discretion, or the party's trustee, if established pursuant to paragraph (h) of § 390.7, may invest in the types of securities specified in this paragraph.

(2) *Interest bearing securities.* The party or the party's trustee may invest in any obligation of the United States Government, including any agency or instrumentality thereof, and in the interest bearing securities listed below:

(i) Any obligation of a state or local government, including any agency or instrumentality thereof, or any domestic obligation, which is rated by Moody's Investors Service, Inc., as ''Baa'' or better or by Standard and Poor's Corporations as ''BBB'' or better;

(ii) Bankers' acceptances, certificates of deposit, repurchase agreements, and short-term commercial obligations,

provided that the latter must be readily marketable and rated not lower than ''Prime'' by Moody's Investors Services, Inc. or ''B'' by Standard & Poor's Corp.; and

(iii) Any unsubordinated obligation of an issuer that has any unsecured securities with a credit rating of ''Baa'' or better if rated by Moddy's Investors Services, Inc., or ''BBB'' or better if rated by Standard and Poor's Corporation, or by an issuer that has a commercial paper rating not lower than ''Prime'' by Moody's Investors Service, Inc. or ''B'' by Standard and Poor's Corporation.

(3) *Guaranteed interest bearing securities.* The party or the party's trustee may invest in interest bearing securities which do not meet the investment criteria set forth in this paragraph (b) *Provided,* That:

(i) The types of interest bearing securities and their terms and conditions are acceptable to the Maritime Administration;

(ii) All principal and interest of the interest bearing securities are unconditionally guaranteed in a form satisfactory to the Maritime Administration and neither the securities nor the obligation to pay interest on the securities is that of a party or a company related to the party within the meaning of section 482 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder; and

(iii) The guarantor, which may be an affiliate of the party, must be either a person that has any unsecured securities with a credit rating of ''Baa'' or better if rated by Moody's Investors Services, Inc., or ''BBB'' or better if rated by Standard & Poor's Corporations, or a person whose commercial paper rated not lower than ''Prime'' by Moody's Investors Services, Inc. or ''B'' junior securities are rated in the highest grade by Moody's Commercial Paper Service or in one of the two highest grades by Standard & Poor's Corporations, and is otherwise acceptable to the Maritime Administration.

(4) *Common and preferred stocks.* The party or the party's trustee may invest in the following common and preferred stocks:

(i) Stock of domestic corporations which is fully listed and registered at the time of purchase on an exchange registered with the Securities and Exchange Commission as a national securities exchange and which would be acquired by prudent men of discretion and intelligence in such matters who are seeking a reasonable income and the preservation of their capital; and

(ii) Preferred stock of a corporation if the common stock of that corporation meets the requirements of this paragraph and if the preferred stock of such corporation would meet such requirements but for the fact that such preferred stock cannot be listed and registered as required because it is nonvoting stock.

(c) *Limitations on investments*—(1) *Interest bearing securities.* The value of securities of any one issuer held in the Fund compared to the value of the total assets of the fund shall not exceed 10 percent in the case of nongovernmental securities referred to in paragraph (b)(2)(i) of this section.

(2) *Common and preferred stock.* The value of common and preferred stock of any one issuer held in the fund shall not exceed 25 percent of the value of the total assets of the fund. In no case may more than 60 percent of the value of the total assets of the fund be invested in common or preferred stock.

(3) *Margin or short sale.* No interest bearing securities or common and preferred stock shall be purchased on margin or be sold short for the account of a fund.

(4) *Related company investments.* Funds shall not be invested in the interest bearing securities or common and preferred stock of the party or of a company related to the party within the meaning of section 482 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

(5) *Subsequent investments.* If at any time the fair market value of the interest bearing securities or common and preferred stock in the fund is more than the limitations stated in this paragraph (c), any subsequent deposit to or withdrawal from the fund or investment made within the fund shall be made in such a way as tends to restore the fund to a posture in which the fair market values of such securities or stock do not exceed such limitations. Values of such securities and stocks

shall be the fair market values as determined by the party on the last day of each semi-annual and annual reporting period.

[41 FR 4265, Jan. 29, 1976, as amended at 42 FR 34882, July 7, 1977; 43 FR 51636, Nov. 6, 1978; 55 FR 34928, Aug. 27, 1990; 73 FR 56740, Sept. 30, 2008]

§ 390.9 Qualified withdrawals.

(a) *In general*—(1) *Defined.* In accordance with 46 U.S.C. 53509, qualified withdrawals are those made from a fund in accordance with the agreement, but only if they are for:

(i) The acquisition, construction or reconstruction of a qualified agreement vessel;

(ii) The acquisition, construction or reconstruction of barges or containers which are part of the complement of a qualified agreement vessel; or

(iii) The payment of the principal on indebtedness incurred in connection with the acquisition, construction or reconstruction of a qualified agreement vessel or a barge or container which is part of the complement of a qualified agreement vessel.

(2) *Tax aspects of a qualified withdrawal.* For the tax aspects of a qualified withdrawal, see 46 U.S.C. 50510 and §3.6 of the joint regulations (§391.6 of this chapter).

(b) *Purpose of qualified withdrawals*—(1) *Acquisition of qualified agreement vessels.* (i) The term *acquisition of a qualified agreement vessel* shall mean any transaction, including a corporate merger, where the party obtains a proprietary interest in an existing vessel and such a proprietary interest will, in the opinion of the Maritime Administrator, further the purposes and policies of the Act. See §390.3 (relating to policy considerations).

(ii) Qualified withdrawals for the acquisition of a qualified agreement vessel shall only be allowed for amounts determined by independent appraisal to be the fair market value of the vessel, at the time of the acquisition, or the actual cost directly allocable to acquiring only the vessel, whichever is less.

(2) *Construction of qualified agreement vessels.* The term *construction of a qualified agreement vessel* shall mean the construction of a vessel with the aid of qualified withdrawals.

(3) *Reconstruction of qualified agreement vessels.* Once an agreement has been entered into, the term *reconstruction of a qualified agreement vessel* shall mean any improvement to an existing vessel which increases the vessel's competitiveness and involves an aggregate sum in excess of $100,000. The Maritime Administrator may waive the monetary limit in this subparagraph in the case of small vessels.

(4) *Payment of principal on indebtedness.* 46 U.S.C. 53509(a)(2) provides that any indebtedness which the party proposes to pay through qualified withdrawals must be shown to the satisfaction of the Maritime Administrator to have been incurred in direct connection with the acquisition, construction or reconstruction of a qualified agreement vessel. The fact that indebtedness is secured by an interest in a qualified agreement vessel is insufficient by itself to demonstrate the direct connection. It is not necessary that the lien or mortgage securing the indebtedness be on the vessel. For example, if the party mortgages an office building in order to finance the construction of a vessel, payments of principal on the mortgage may be made with qualified withdrawals.

(c) *Limitations on qualified withdrawals*—(1) *Capitalized costs requirement.* All qualified withdrawals must be for costs which are capitalized under the Internal Revenue Code of 1986, as amended, and the regulations thereunder and so reported on the party's Federal Income Tax return.

(2) *Executed contract requirement and reimbursement of general funds.* Qualified withdrawals may be made for the purpose of reimbursing general funds subject to the following limitations:

(i) Qualified withdrawals may not be made until a construction, reconstruction or acquisition contract is executed. However, the party may reimburse its general funds for expenditures applicable to the construction, reconstruction or acquisition contract which occurred prior to the date of contracting if such reimbursements are made within 120 days from the date of such contracting.